BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2002-234-C - ORDER NO. 2002-679

SEPTEMBER 19, 2002

IN RE:	Philip S. Porter, Consumer Advocate for the)	ORDER HOLDING
	State of South Carolina,)	COMPLAINT IN
)	ABEYANCE AND
	Complainant/Petitioner,)	ESTABLISHING
)	GENERIC PROCEEDING
	vs.)	
)	
	BellSouth Telecommunications, Inc.,)	
)	
	Defendant/Respondent.)	
)	

This matter comes before the Public Service Commission of South Carolina (the Commission) on a Complaint filed by the Consumer Advocate for the State of South Carolina (the Consumer Advocate) against BellSouth Telecommunications, Inc. (BellSouth or the Company). Because of the reasoning stated below, we hold the Complaint in abeyance at this time.

The Consumer Advocate's Complaint states that, on June 6, 2002, BellSouth filed a tariff pursuant to its alternative regulation plan in which it notified the Commission of price increases on certain residential and business services, including operator assistance charges, verification and emergency interrupt services, directory assistance (including a decrease in the local residential directory assistance call allowance), non-published and additional listings, call forwarding, three-way calling, call waiting, per use three-way calling, call return, per use call return, per use repeat dialing, per use busy connect, Caller

ID Basic, Caller ID Deluxe, preferred call forwarding, call block, call tracing, and customized code restrictions. Changes in intraLATA long distance include the elimination of time-of-day discounts and billing on full not partial, minutes. The Consumer Advocate goes on to allege that the proposed price increases in this filing represent an abuse of market position on the part of BellSouth, as per S.C. Code Ann. Section 58-9-576 (Supp. 2001). According to the Consumer Advocate, the filing itself demonstrates that there is a lack of a competitive alternative to control BellSouth's pricing behavior, since in a truly competitive market, according to the Consumer Advocate, the Company would not be able to sustain such price increases without the loss of significant business. The Consumer Advocate further alleges that BellSouth is using near monopoly control to subsidize operations which are more subject to competition.

In addition, the Consumer Advocate alleges that the proposal to decrease the local residential Directory Assistance call allowance from three calls per month to two calls per month is contrary to the settlement agreement signed between the Consumer Advocate and BellSouth in Docket No. 95-862-C, said agreement having been approved by this Commission. The Consumer Advocate also proposes that this Commission halt the proposed price increases.

BellSouth filed a Motion to Dismiss the Complaint. BellSouth alleges that the Consumer Advocate has not met the standards required for filing a complaint alleging an abuse of market power and provides no facts or evidence that BellSouth's increased prices constitute an abuse of market power, and that the Consumer Advocate misinterprets the law. Further, BellSouth states that the reduction in the number of

allowable Directory Assistance calls does not violate the named settlement agreement, nor the Commission Order approving the agreement.

BellSouth further alleges in its Motion that the Consumer Advocate complains only of price increases, not decreases. BellSouth states its belief that price increases, by definition, cannot drive competitors out of the market, and that the determination of whether a price increase is an abuse of market position is a question of law. Further, BellSouth alleges that the Consumer Advocate has not viewed similar price increases in the past as an abuse of market position, and that he has presented no evidence that BellSouth has abused its position in the market. In addition, BellSouth states that the price increases are for residence and business optional and competitive services, and that, unlike in a monopoly environment; the prices in a competitive marketplace are raised and lowered depending on market factors. Unlike rate of return regulation, cost has no relationship to price in a competitive market, except prices must be set above Long Run Incremental Cost, according to the Company. Finally, BellSouth alleges that Directory Assistance is not covered by the agreement mentioned by the Consumer Advocate, and the Consumer Advocate's request to stay the price increases ignores the plain language of the statute and should not be granted.

The Consumer Advocate also filed a Response to BellSouth's Motion to Dismiss. The Consumer Advocate states that BellSouth's position amounts to a deregulation of the services provided, an intent not consistent with the statute, according to BellSouth. Further, the Consumer Advocate notes that its prior statements do not mean that there cannot be other forms of an abuse of market position. Further, the Consumer Advocate

noted that this Commission, in Order No. 2000-676 at 11, did not define the term "abuse of market position" in our Order establishing BellSouth's alternative regulation guidelines, and that we stated that we would establish the standards in future cases. The Consumer Advocate noted that that term may be defined in the course of this proceeding. In addition to arguing against other points made by BellSouth in the Company's Motion, the Consumer Advocate also defends its position that the decrease in the number of allowable Directory Assistance calls violates a settlement agreement.

We have examined this matter, and do hereby hold the Consumer Advocate's Complaint in abeyance, and deny BellSouth's Motion to Dismiss at this time. We have reconsidered our position taken in Order No. 2000-676 that we preferred to establish standards for "abuse of market position" through the cases that come before us. We believe that, before we can continue to process complaints such as the Consumer Advocate's, we are going to have to establish a definition for "abuse of market position" and criteria for determining whether various behaviors by a Company constitute "abuse of market position."

Accordingly, we hereby establish a generic proceeding under Docket No. 1999-469-C, BellSouth's Alternative Regulation Docket, in order to make this determination. After we define "abuse of market position," we will reexamine the Consumer Advocate's Complaint, including the allegation of an abuse of market position and, further, that a reduction in the allowable number of Directory Assistance calls violates a prior settlement agreement.

We decline to stay institution of the prices in BellSouth's filing in this matter. <u>See</u> the requirements of S.C. Code Ann. Section 58-9-576(B)(6)(Supp. 2001) and our Order No. 2000-676 at 11.

This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

Mignon L. Clyburn, Chairman

ATTEST:

Gary E. Walsh, Executive Director

(SEAL)